

Assembly Bill No. 1029

Passed the Assembly August 31, 2006

Chief Clerk of the Assembly

Passed the Senate August 23, 2006

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 64, 480.2, 483, and 532 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1029, Jerome Horton. Property taxation.

The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, "full cash value" is defined as the assessor's valuation of real property as shown on the 1975–76 tax bill under "full cash value" or, thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. Existing property tax law specifies those circumstances in which the transfer of ownership interests in a corporation, partnership, limited liability company, or other legal entity results in a change in ownership of the real property owned by that entity, and requires a person or entity that obtains a controlling or majority ownership interest in a legal entity, or an entity that makes specified transfers of ownership interests in the legal entity, to file a change in ownership statement, as specified, with the State Board of Equalization within 45 days of specified transactions, or whenever requested by the board. Existing law imposes a penalty of 10% of the taxes owed to the county on a parcel of real property if an assessee fails to file a change in ownership statement with the board within 45 days of a board request.

This bill would modify the provisions of that statement to specify that the county assessor shall estimate the value of, and reassess, the real property owned by an entity in its jurisdiction if the entity fails to respond to a county assessor's request for information and the assessor has information that a change in ownership has occurred, as specified. This bill would also authorize a county board of supervisors to abate, and to authorize the county assessor to abate, the 10% penalty if the failure to file the change in ownership statement within the prescribed time period was due to reasonable cause, the person or legal entity has

subsequently filed a change of ownership statement with the State Board of Equalization, as provided, and the person or legal entity has filed with the county board of supervisors a written application for abatement of the penalty no later than 60 days after the date on which the person or legal entity was notified of the penalty, as provided. This bill would also define “reasonable cause” for purposes of these provisions.

Existing law requires the Franchise Tax Board to include specified questions on the income tax returns of specified entities regarding changes in ownership of the real property owned by the entity and requires the Franchise Tax Board to notify the State Board of Equalization if an entity answers “yes” to these questions.

This bill would delete the specified questions and would instead require the Franchise Tax Board to include general questions on these income tax returns asking whether a change in control or change in ownership has occurred and whether the entity owns real property in the state.

Existing property tax law provides for escape assessments to be made on property outside the regular assessment period and requires that certain notices, in a form prescribed by the State Board of Equalization, of those assessments be given to assessees.

This bill would clarify that, in the case where property has escaped taxation, in whole or in part, or has been underassessed, following a change in ownership or change in control, as provided, an escape assessment may be made for each year in which the property escaped taxation or was underassessed, if a change in ownership statement, as required, was not filed within 45 days of a written request by the State Board of Equalization.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 64 of the Revenue and Taxation Code is amended to read:

64. (a) Except as provided in subdivision (i) of Section 61 and subdivisions (c) and (d) of this section, the purchase or transfer of ownership interests in legal entities, such as corporate

stock or partnership or limited liability company interests, shall not be deemed to constitute a transfer of the real property of the legal entity. This subdivision is applicable to the purchase or transfer of ownership interests in a partnership without regard to whether it is a continuing or a dissolved partnership.

(b) Any corporate reorganization, where all of the corporations involved are members of an affiliated group, and that qualifies as a reorganization under Section 368 of the United States Internal Revenue Code and that is accepted as a nontaxable event by similar California statutes, or any transfer of real property among members of an affiliated group, or any reorganization of farm credit institutions pursuant to the federal Farm Credit Act of 1971 (Public Law 92-181), as amended, shall not be a change of ownership. The taxpayer shall furnish proof, under penalty of perjury, to the assessor that the transfer meets the requirements of this subdivision.

For purposes of this subdivision, “affiliated group” means one or more chains of corporations connected through stock ownership with a common parent corporation if both of the following conditions are met:

(1) One hundred percent of the voting stock, exclusive of any share owned by directors, of each of the corporations, except the parent corporation, is owned by one or more of the other corporations.

(2) The common parent corporation owns, directly, 100 percent of the voting stock, exclusive of any shares owned by directors, of at least one of the other corporations.

(c) (1) When a corporation, partnership, limited liability company, other legal entity, or any other person obtains control through direct or indirect ownership or control of more than 50 percent of the voting stock of any corporation, or obtains a majority ownership interest in any partnership, limited liability company, or other legal entity through the purchase or transfer of corporate stock, partnership, or limited liability company interest, or ownership interests in other legal entities, including any purchase or transfer of 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained, the purchase or transfer of that stock or other interest shall be a change of ownership of the real property owned by the

corporation, partnership, limited liability company, or other legal entity in which the controlling interest is obtained.

(2) On or after January 1, 1996, when an owner of a majority ownership interest in any partnership obtains all of the remaining ownership interests in that partnership or otherwise becomes the sole partner, the purchase or transfer of the minority interests, subject to the appropriate application of the step-transaction doctrine, shall not be a change in ownership of the real property owned by the partnership.

(d) If property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Section 62, then the persons holding ownership interests in that legal entity immediately after the transfer shall be considered the “original coowners.” Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property that was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised.

The date of reappraisal shall be the date of the transfer of the ownership interest representing individually or cumulatively more than 50 percent of the interests in the entity.

A transfer of shares or other ownership interests that results in a change in control of a corporation, partnership, limited liability company, or any other legal entity is subject to reappraisal as provided in subdivision (c) rather than this subdivision.

(e) (1) To assist in the determination of whether a change of ownership has occurred under subdivisions (c) and (d), the Franchise Tax Board shall include a question on returns for partnerships, banks, and corporations (except tax-exempt organizations) asking (A) if a change in control or a change in ownership, as described in this section, of the entity has occurred, and (B) if the entity owns real property in California.

(2) If the entity responds affirmatively to either of the questions described in paragraph (1), then the Franchise Tax Board shall furnish the names and addresses of that entity to the State Board of Equalization.

SEC. 2. Section 480.2 of the Revenue and Taxation Code is amended to read:

480.2. (a) Whenever there is a change in ownership of any corporation, partnership, limited liability company, or other legal entity, as defined in subdivision (d) of Section 64, a signed change in ownership statement as provided in subdivision (b) shall be filed by such corporation, partnership, limited liability company, or other legal entity with the board at its office in Sacramento. The statement shall list all counties in which the corporation, partnership, limited liability company, or legal entity owns real property.

(b) The change in ownership statement required pursuant to subdivision (a) shall be declared to be true and under penalty of perjury and shall give such information relative to the ownership interest acquisition transaction as the board shall prescribe after consultation with the California Assessors' Association. The information shall include, but not be limited to, a description of the property owned by the corporation, partnership, limited liability company, or other legal entity, the parties to the transaction, the date of the ownership interest acquisition, and a listing of the "original coowners" of the corporation, partnership, limited liability company, or other legal entity prior to the transaction. The change in ownership statement shall not include any question which is not germane to the assessment function. The statement shall contain a notice that is printed, with the title in at least 12-point boldface type and the body in at least 8-point boldface type, in the following form:

"Important Notice"

"The law requires any corporation, partnership, limited liability company, or other legal entity owning real property in California subject to local property taxation and transferring shares or other ownership interest in such legal entity which constitute a change in ownership pursuant to subdivision (d) of Section 64 of the Revenue and Taxation Code to complete and file a change in ownership statement with the State Board of Equalization at its office in Sacramento. The change in ownership statement must be filed within 45 days from the date that shares or other ownership interests representing cumulatively more than 50

percent of the total control or ownership interests in the entity are transferred by any of the original coowners in one or more transactions. The law further requires that a change in ownership statement be completed and filed whenever a written request is made therefor by the State Board of Equalization, regardless of whether a change in ownership of the legal entity has occurred. The failure to file a change in ownership statement within 45 days from the date of a written request by the Board of Equalization results in a penalty of 10 percent of the taxes applicable to the new base year value reflecting the change in ownership of the real property owned by the corporation, partnership, limited liability company, or legal entity (or 10 percent of the current year's taxes on that real property if no change in ownership occurred). This penalty will be added to the assessment roll and shall be collected like any other delinquent property taxes, and be subject to the same penalties for nonpayment. If, after written request by the assessor, the corporation, partnership, limited liability company, or other legal entity, required by law to file the change in ownership statement, fails to furnish required information and the assessor has information that a change in ownership has occurred, the assessor, based upon information in his or her possession, shall estimate the value of the property and, based upon this estimate, promptly assess the property."

(c) In the case of a corporation, the change in ownership statement shall be signed either by an officer of the corporation or an employee or agent who has been designated in writing by the board of directors to sign such statements on behalf of the corporation. In the case of a partnership, limited liability company, or other legal entity, the statement shall be signed by an officer, partner, manager, or an employee or agent who has been designated in writing by the partnership, limited liability company, or legal entity.

(d) No person or entity acting for or on behalf of the parties to a transfer of real property shall incur liability for the consequences of assistance rendered to the transferee in preparation of any change in ownership statement, and no action may be brought or maintained against any such person or entity as a result of such assistance.

Nothing in this section shall create a duty, either directly or by implication, that such assistance be rendered by any person or entity acting for or on behalf of parties to a transfer of real property.

(e) The board or assessors may inspect any and all records and documents of a corporation, partnership, limited liability company, or legal entity to ascertain whether a change in ownership as defined in subdivision (d) of Section 64 has occurred. The corporation, partnership, limited liability company, or legal entity shall upon request, make such documents available to the board or assessors during normal business hours.

SEC. 3. Section 483 of the Revenue and Taxation Code is amended to read:

483. (a) (1) If the assessee establishes to the satisfaction of the county board of supervisors that the failure to file the change in ownership statement within the time required by subdivision (a) of Section 482 was due to reasonable cause and not due to willful neglect, and has filed the statement with the assessor, the board of supervisors may order the penalty abated, provided the assessee has filed with the board of supervisors a written application for abatement of the penalty no later than 60 days after the date on which the assessee was notified of the penalty.

(2) If the penalty is abated it shall be canceled or refunded in the same manner as an amount of tax erroneously charged or collected.

(b) (1) The provisions of subdivision (a) shall not apply in any county in which the board of supervisors adopts a resolution to that effect. In that county the penalty provided for in subdivision (a) of Section 482 shall be abated if the assessee files the change in ownership statement with the assessor no later than 60 days after the date on which the assessee was notified of the penalty.

(2) If the penalty is abated it shall be canceled or refunded in the same manner as an amount of tax erroneously charged or collected.

(c) (1) If a person or legal entity establishes to the satisfaction of the county board of supervisors that the failure to file the change in ownership statement within the time required by subdivision (b) of Section 482 was due to reasonable cause and not due to willful neglect, and has filed the statement with the State Board of Equalization, the county board of supervisors may

order that the penalty be abated, provided the person or legal entity has filed with the county board of supervisors a written application for abatement of the penalty no later than 60 days after the date on which the person or legal entity was notified of the penalty pursuant to Section 534.

(2) A county board of supervisors may adopt an ordinance or resolution authorizing the assessor to abate the penalty provided for in subdivision (b) of Section 482.

(3) If the penalty is abated, it shall be canceled or refunded in the same manner as an amount of tax erroneously charged or collected.

(d) For purposes of this section, “reasonable cause” includes, but is not limited to, all of the following:

(1) The occurrence of an emergency, as described in Section 8558 of the Government Code, that caused the person’s failure to make a timely remittance.

(2) A natural disaster or other catastrophe directly affecting the business operations of the person that caused the person’s failure to make a timely remittance.

(3) The State Board of Equalization failed to send returns or other information to the correct address of record, that caused the person’s failure to make a timely remittance.

SEC. 4. Section 532 of the Revenue and Taxation Code is amended to read:

532. (a) Except as provided in subdivision (b), any assessment made pursuant to either Article 3 (commencing with Section 501) or this article shall be made within four years after July 1 of the assessment year in which the property escaped taxation or was underassessed.

(b) (1) Any assessment to which the penalty provided for in Section 504 must be added shall be made within eight years after July 1 of the assessment year in which the property escaped taxation or was underassessed.

(2) Any assessment resulting from an unrecorded change in ownership for which either a change in ownership statement, as required by Section 480, or a preliminary change in ownership report, as required by Section 480.3, is not timely filed with respect to the event giving rise to the escape assessment or underassessment shall be made within eight years after July 1 of the assessment year in which the property escaped taxation or

was underassessed. For purposes of this paragraph, an “unrecorded change in ownership” means a deed or other document evidencing a change in ownership that was not filed with the county recorder’s office at the time the event took place.

(3) Notwithstanding paragraphs (1) and (2), in the case where property has escaped taxation, in whole or in part, or has been underassessed, following a change in ownership or change in control and either the penalty provided for in Section 503 must be added or a change in ownership statement, as required by Section 480.1 or 480.2 was not filed timely with respect to the event giving rise to the escape assessment or underassessment, an escape assessment shall be made for each year in which the property escaped taxation or was underassessed.

(4) For purposes of this subdivision, “timely” means 45 days from the date of a written request by the State Board of Equalization.

(c) For purposes of this section, “assessment year” means the period defined in Section 118.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that this act applies to property assessments for the 2006–07 fiscal year as soon as possible, it is necessary that this act take effect immediately.

Approved _____, 2006

Governor